

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

USAA GENERAL INDEMNITY COMPANY	:	CIVIL ACTION
9800 Fredericksburg Road	:	
San Antonio, TX 78288	:	
	:	
	:	
v.	:	
	:	NO: 19-cv-03820
	:	
ELISABETH FLOYD	:	
Inmate No: PA 1055	:	
SCI Muncy State Prison	:	
6454 Route 405	:	
Muncy, PA 17756	:	

ORDER

AND NOW, this ____ day of _____, 2019, upon consideration of the Motion for Entry of Default Judgment of USAA General Indemnity Company and any Responses thereto, it is hereby ORDERED and DECREED that judgment is entered in favor of USAA General Indemnity Company and against Defendant, Elisabeth Floyd.

IT IS FURTHER ORDERED and DECREED that USAA General Indemnity Company has neither a duty to defend nor a duty to indemnify Elisabeth Floyd in Anne P. Combs, Executrix of the Estate of Alfred C. Payne and Anne P. Combs, in her own right v. Elisabeth Anna Floyd, et al, Court of Common Pleas, Montgomery County, Civil Division, Case Number: 2007-23008.

BY THE COURT:

Honorable Berle M. Schiller

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MOTION IN SUPPORT OF THE ENTRY OF DEFAULT
AS TO DEFENDANT, ELISABETH FLOYD

Plaintiff, USAA General Indemnity Company (“Plaintiff USAA”) by and through its counsel, Marshall Dennehey Warner Coleman & Goggin hereby moves this Honorable Court to enter judgment against Elisabeth Floyd pursuant to Federal Rule of Civil Procedure 55(b) and further declare that Plaintiff USAA owes neither a duty to defend nor indemnify Elisabeth Floyd in Anne P. Combs, Executrix of the Estate of Alfred C. Payne and Anne P. Combs, in her own right v. Elisabeth Anna Floyd, et al, Court of Common Pleas, Montgomery County, Civil Division, Case Number: 2007-23008 and in support thereof, avers as follows:

1. Plaintiff USAA instituted this Declaratory Judgment Action against its insured, Defendant, Elisabeth Floyd (“Defendant Floyd”) because Defendant Floyd has sought defense and indemnification from Plaintiff USAA under a Homeowners Policy as a result of the Estate of Alfred Payne filing a lawsuit against Elisabeth Floyd for a “vicious and violent assault” committed by her.

2. The Declaratory Judgment Complaint was filed with this Honorable Court on or about August 22, 2019. A true and correct copy of the Declaratory Judgment Complaint is attached hereto, incorporated herein and marked as Exhibit "1."

3. Defendant Floyd, who is incarcerated in SCI Muncy Prison in Muncy, Pennsylvania, was personally served a copy of the Declaratory Judgment Complaint on August 29, 2019 by Pennsylvania State Constable Patrick M. McCloskey. A true and correct copy of the Proof of Service is attached hereto, incorporated herein and marked as Exhibit "2."

4. Because Defendant Floyd never filed a responsive pleading to the Declaratory Judgment Complaint, a Request for Default was filed with this Honorable Court on or about August 7, 2019. A true and correct copy of the Request for Default is attached hereto, incorporated herein and marked as Exhibit "3."

5. The Request to Enter Default of Defendant Floyd pursuant to Federal Rule of Civil Procedure 55(b) was personally served upon Defendant Floyd at Muncy State Prison on October 17, 2019 by Pennsylvania State Constable Patrick M. McCloskey. A true and correct copy of the Certificate/Proof of Service is attached hereto, incorporated herein and marked as Exhibit "4."

6. On October 7, 2019, this Honorable Court entered a Default Judgment against Elisabeth Floyd for failure to appear, plead or otherwise defend.

7. "Prior to obtaining a default judgment under either Rule 55(b)(1) or Rule 55(b)(2), there must be an entry of default as provided by Rule 55(a)." 10A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2682, at 13 (3d ed. 1998).

8. Federal Rule of Civil Procedure 55(b) permits this Honorable Court to enter a Default Judgment after a Default has been entered pursuant to Rule 55(a). See, Moore's Federal Practice and Procedure, 55.05(2).

9. Based upon the aforesaid and the arguments contained within the attached Memorandum of Law, Plaintiff USAA respectfully requests this Honorable Court enter an Order in the form attached hereto.

Respectfully submitted,

MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN

BY: 

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Attorney for Plaintiff, USAA General
Indemnity Insurance Company

Date: 10/29/19

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CERTIFICATE OF SERVICE

I, John R. Riddell, Esquire, do hereby certify that a true and correct copy of USAA's Motion to Enter Default Judgment was electronically filed with the Court and was served upon all parties via electronic notification and/or first class mail at the below listed address:

Elisabeth Floyd, PA-1055 (*Via First Class Mail and Personal Service*)
SCI Muncy
6454 Route 405
Muncy, PA 17756

MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN

BY: 

JOHN R. RIDDELL, ESQUIRE
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Attorney for Plaintiff, USAA General
Indemnity Insurance Company

Date: 10/29/19